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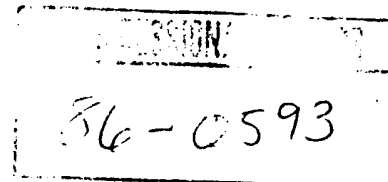
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## U.S. HOUSE OF REPRESENTATIVES

PERMANENT SELECT COMMITTEE

ON INTELLIGENCE

WASHINGTON, DC 20515



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February 28, 1986

MEMORANDUM FOR: [REDACTED]

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FROM:

*DSA*  
David S. Addington  
Counsel, Subcommittee on Legislation

SUBJECT:

Pending Private Sector Polygraph Legislation

1. Background. As I discussed with you on the telephone today, Congressman C. W. Bill Young's office has asked me to check informally and promptly with each of your agencies on legislation aimed at private sector polygraph usage to be considered shortly by the House of Representatives. As you know, Congressman Young has been one of the strongest supporters in the House of ensuring the availability of polygraph examinations for personnel security screening to protect sensitive national security information.

2. Expected Floor Action. The House will soon consider H.R. 1524, as reported (H. Rept. 99-416) under the rule approved by the House on December 12, 1985 (H. Res. 337). As the floor debate preceding adoption of the rule made clear, Congressman Young intends to offer H.R. 3916 as an amendment in the nature of a substitute to H.R. 1524. When he offers H.R. 3916 as a substitute to H.R. 1524, he would like to include whatever amendments to H.R. 3916 may be necessary to ensure that its enactment would have no adverse impact on federal agency polygraph programs.

3. Potential Concerns with H.R. 3916. Section 4 of H.R. 3916 provides that:

"No employer may take any action affecting the employment status of an employee or prospective employee, if such action is based on the results of a polygraph examination of such employee or prospective employee that has not been administered in accordance with sections 5 and 6 of this Act."

February 25, 1986

Amendments to H.R. 3916 as introduced

Amendment No. 1—On page 6, after line 7, insert the following new subsection at the end of Section 5 (relating to rights of polygraph examinee):

"(d) Nothing in this section shall be construed to apply with respect to a polygraph examination conducted by, or at the direction of, the United States in accordance with otherwise applicable Federal law."

Amendment No. 2—On page 9, after line 16, insert the following new subsection at the end of Section 6 (relating to minimum standards for polygraph examinations):

"(j) Nothing in this section shall be construed to apply to a polygraph examiner employed by the United States, or conducting a polygraph examination at the direction of the United States in accordance with otherwise applicable Federal law."

Amendment No. 3—On page 11, after line 25, insert the following new subsection in Section 8 (relating to certification of polygraph examiners):

"(d) Nothing in this section shall be construed to apply to a polygraph examiner employed by the United States, or conducting a polygraph examination at the direction of the United States in accordance with otherwise applicable Federal law."

Amendment No. 4—On page 12, after line 14, insert the following new subsection in Section 12 (relating to disclosure of information):

"(d) Nothing in this section prohibits the disclosure of information obtained during a polygraph examination to a federal law enforcement agency or intelligence agency in accordance with otherwise applicable Federal law or to prohibit subsequent redisclosure by such an agency in accordance with such law."

Explanation for Amendments

The use of the National Labor Relations Act definition of "employer" in Section 2(2)(A) of H.R. 3916, which excludes the United States, and the findings set forth in Section 3 of the bill, make clear that the bill is intended to regulate private sector use of polygraphs for commercial purposes, and is not intended to regulate use of polygraphs by the United States. However, several provisions of the bill would have an unintended adverse impact on the use of polygraphs by the United States for national security and law enforcement purposes as currently permitted by federal law.

The amendments ensure that H.R. 3916 will not restrict currently authorized national security and law enforcement uses of the polygraph, including uses in industrial security programs conducted at the direction of the United States to protect national security projects. The amendments also ensure that H.R. 3916 will not affect existing controls on the qualifications of federal agency polygraph examiners and on the use by federal agencies of polygraph-derived information.

The drafters of H.R. 3916 clearly intended to regulate only private sector polygraph usage, as evidenced by the use in Section 2(2) of the bill of the National Labor Relations Act definition of "employer," which excludes the United States. However, because the provisions of section 5 (relating to the rights of polygraph examinees), section 6 (relating to minimum standards for polygraph examinations), section 8 (regarding certification of polygraph examiners) and section 9 (regarding disclosure of polygraph information) establish requirements and prohibitions not qualified by the term "employer," concern has arisen that Sections 5, 6, 8, and 9 of H.R. 3916 could be construed to apply to the use of polygraphs by the United States (which, of course, includes your agencies). Moreover, concern has been expressed that the bill could have an adverse impact on industrial personnel security polygraph programs under which key employees of private sector companies under contract to U.S. intelligence agencies must undergo polygraph examinations as a condition of access to sensitive classified information.

4. Request for Informal Response by March 7th. Attached is a page of draft amendments to H.R. 3916 dated February 25, 1986 under consideration by Congressman Young's staff to alleviate any possible federal agency concerns, especially national security concerns, with H.R. 3916. Please have the appropriate member of your staff telephone me (225-7310) by Friday, March 7th with your informal thoughts on the following:

(1) Would the attached proposed amendments to be incorporated in H.R. 3916 before it is offered as a substitute to H.R. 1524 ensure that H.R. 3916, if it were to become law, would not have an adverse effect on your agency?

(2) What would be the likely response of your agency if Mr. Young were to request your agency's views on H.R. 3916 with the proposed amendments, as a substitute to H.R. 1524? (Obviously the hope is that your agency head would respond that he supported the revised H.R. 3916 package, or at least that he had no objection.)

The emphasis on this request is informality and speed. We understand that your response can only be informal guidance. Thank you for your help.

Enclosures: H.R. 1524 as reported  
H. Rept. 99-416  
H. Res. 337  
Floor Action on H.Res. 337  
H.R. 3916  
Amendments to H.R. 3916 (February 25, 1985)

cc: Mr. Harry Glenn  
Office of the Honorable C.W. Bill Young